

## **REMARKS**

Claims 1-9 and 11-38 are pending in the present application. Claims 15, 18-19, and 21 currently stand rejected under 35 U.S.C. § 102(e) as discussed below. Claims 1-9, 11-14, 16-17, 20, and 22-38 currently stand rejected under 35 U.S.C. § 103 as discussed below.

Claims 1, 11-13, 18, 20, 21, 27, 28, 31-36, and 38 are herein amended. No new matter has been added. Claims 15-17 are hereby canceled. Claim 18 has been amended and rewritten in independent form, including recitations of former claim 15 from which it previously depended. Claims 20-21 have been amended to change their dependencies from canceled claims. Claims 1, 11-13, 27, 28, and 31-36 have been amended to correct typographical and grammatical errors and to more distinctly recite the claimed techniques. Claim 38 has been amended to more distinctly point out that 405 nm refers to the operating wavelength of the optical reader.

### ***Claim Rejections – 35 U.S.C. § 102(e)***

Claims 15, 18-19, and 21 currently stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Publication No. 2002/0100043 (“Lowthert”). Claim 15 has been canceled. Claim 18 is herein amended and rewritten in independent form.

### **Independent Claim 18**

**Claim 18** as amended recites in part:

a reader mechanism having a single optical pickup and configured  
for reading entertainment content prerecorded on a first medium  
and reading advertisements pre-recorded on a second medium

Applicants respectfully contend that the cited reference does not teach the quoted claim recitation. Lowthert describes a local content store 42 and a local ad store 44 and notes: “In some embodiments, these local stores may be constructed as separate storage elements, while in other embodiments, various combinations of them may be constructed to share a common storage element.” (Lowthert, paragraph [0025].) Lowthert does not describe the use of a *single* optical pickup for reading two local stores constructed as separate storage elements (i.e., on a first medium and a second medium). Embodiments wherein the local stores are constructed to share a

common storage element do not describe “entertainment content prerecorded on a first medium and reading advertisements pre-recorded on a second medium.” Nowhere does Lowthert discuss a reader mechanism having a *single* optical pickup and configured for reading from *both* a first and a second medium.

For at least the reasons explained above, Applicants respectfully submit that the cited references, either alone or in combination, do not teach the recitations of claim 18 and, therefore, claim 18 is patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claim 18 be withdrawn.

### **Claims 19 and 21**

**Claim 19** depends from claim 18. Applicants respectfully submit that for at least the reasons explained above with respect to independent claim 18, dependent claim 19 is patentably defined over the cited art. Furthermore, Applicants are unable to discern any description in the cited art of mechanical, sequential moving of first and second media for reading by a single optical pickup. Accordingly, respectfully request that the rejection of claim 19 be withdrawn.

**Claim 21** depends from claim 18. Applicants respectfully submit that for at least the reasons explained above with respect to independent claim 18, dependent claim 21 is patentably defined over the cited art and accordingly, respectfully request that the rejection of claim 21 be withdrawn.

### ***Claim Rejections – 35 U.S.C. § 103(a)***

### **Claims 16, 17, and 20**

Claims 16, 17, and 20 stand rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Lowthert and in view of Publication No. 2004/0103439 (“Macrae”). **Claims 16 and 17** have been canceled.

**Claim 20**, as amended, depends from claim 18. Applicants respectfully submit that for at least the reasons explained above with respect to independent claim 18, dependent claim 20 is

patentably defined over the cited art and accordingly, respectfully request that the rejection of claim 20 be withdrawn.

**Claims 1, 5-9, 11, 22-27, 30-31, 34-35, and 38**

Claims 1, 5-9, 11, 22-27, 30-31, 34-35, and 38 stand rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Lowthert and in view of U.S. Pat. No. 6,029,045 (“Picco”).

**Claim 1** recites in part:

periodically distributing advertisements pre-recorded on  
advertisement storage media to said customer locations, wherein at  
least some of said advertisements are updated before being  
distributed

As the Examiner noted, “Lowthert is silent to updating some of previously stored or pre-recorded ads.” (Office Action of 5/18/2007, p. 5.) Applicants respectfully disagree with the Examiner’s characterization of the cited passages from Picco as disclosing a “system and method for inserting local content into programming content, where some of the pre-recorded ads are updated accordingly with new ads.” (Office Action of 5/18/2007, p. 5.) Column 6, lines 29-40 of Picco discusses storing only local content which satisfies certain preselected user preferences. Column 7, lines 9-28 and lines 33-54 discuss *selecting* local content from among transmitted local content. For example: “The agent may also be programmed to *select* particular local content based on the statistics.” (Picco, column 7, lines 28-30, emphasis added.) There is no discussion of updating, or of *periodically* distributing. Picco also describes: “the scheduler may generate an instruction ... which instructs the set-top box to store a different set of local content *that is also being distributed to the household.*” (Picco, column 7, lines 37-41, emphasis added.) Applicants contend that the cited passages of Picco do not disclose *periodically distributing* advertisements pre-recorded on storage media, wherein at least some of the advertisements are *updated before being distributed*.

For at least the reasons explained above, Applicants respectfully submit that the cited references, either alone or in combination, do not teach the recitations of claim 1 and, therefore, claim 1 is patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claim 1 be withdrawn.

**Claim 5** depends from claim 1. Claim 1 recites in part: “periodically distributing advertisements pre-recorded on advertisement storage media to said customer locations”. Claim 5 recites in part: “wherein each of the advertisement media includes both advertisements and an index of entertainment content.” Lowthert describes “an electronic program guide,” but does not describe it as periodically distributed or as being on advertisement storage media. For at least these reasons, as well as for the reasons explained above with respect to claim 1, Applicants respectfully submit that the cited references, either alone or in combination, do not teach the recitations of claim 5 and, therefore, claim 5 is patentably defined over the cited art.

Accordingly, Applicants respectfully request that the rejection of claim 5 be withdrawn.

**Claims 6-9 and 11** each depend, directly or indirectly, from claim 1. Applicants respectfully submit that for at least the reasons explained above with respect to independent claim 1, claims 6-9 and 11 are patentably defined over the cited art and, accordingly, respectfully request that the rejection of these claims be withdrawn.

**Claim 22** recites in part:

periodically distributing to each of said customers pre-recorded  
advertising on an updated advertisement medium, wherein at least  
some of the advertising on said updated advertisement medium is  
updated with respect to previously distributed advertising

For at least the reasons explained above with respect to claim 1, Applicants respectfully submit that the cited references, either alone or in combination, do not teach the quoted recitations of claim 22 and, therefore, claim 22 is patentably defined over the cited art.

Accordingly, Applicants respectfully request that the rejection of claim 22 be withdrawn.

**Claims 23-27, 30-31, and 34** each depend, directly or indirectly, from claim 22. Applicants respectfully submit that for at least the reasons explained above with respect to independent claim 22, claim 23-27, 30-31, and 34 are patentably defined over the cited art and, accordingly, respectfully request that the rejection of these claims be withdrawn.

**Claim 35** depends from claim 22 and recites in part: “communicating *information that is representative of the playing of entertainment content and advertisements* between the customer and a system operator.” The passages of Lowthert cited by the Examiner describe various ways

of controlling when and which ads are displayed, and describe means by which a user may pay to terminate an ad, and “push” and “pull” models for retrieving ads. Applicants respectfully contend that the cited passages of Lowthert do not teach the quoted recitation. For at least these reasons, as well as for the reasons explained above with respect to claim 22, Applicants respectfully submit that claim 35 is patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claim 35 be withdrawn.

**Claim 38** has been amended to clarify that the 405 nm recitation refers to the wavelength at which an optical reader operates. Support for the claim amendment may be found at least at paragraph [0067] of the application. Claim 38 recites in part: “an optical reader operating at a wavelength at or below 405nm.” The Examiner stated that claim 38 “is met as previously discussed with respect to claims 12-13.” The Examiner cited U.S. Pat. No. 6,238,763 (“Sandstrom”) in rejecting claims 12-13. The cited passages of Sandstrom describe the thicknesses of various recording and dielectric layers, but do not disclose information relating to the wavelengths at which an optical reader is operated. For at least these reasons, as well as for the reasons explained above with respect to claim 22, Applicants respectfully submit that claim 38 is patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claim 38 be withdrawn.

### **Claims 12-13**

Claims 12-13 stand rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Lowthert and in view Picco and further in view of U.S. Pat. No. 6,238,763 (“Sandstrom”).

**Claim 12** recites “a disc having a diameter greater than 125 mm and less than 300mm.” Standard DVDs and CDs have a diameter of 120 mm. The present Application describes a reason for the claimed diameters:

Finally, discs may provide a hardware security feature by incorporating a larger diameter than a conventional CD or DVD. Such a disc must be sufficiently large that they cannot be inserted and played in a conventional CD/DVD player discs may range from about 125 mm to 300 mm.

(Specification, paragraph [0065].)

Lowthert is silent on the diameter of entertainment content media. Lowthert describes the use of “optical discs, DVD, DVD-R, DVD-RW, CD, CD-ROM, CD-R, CD-RW ....” As noted above, standard optical disks have a diameter of 120 mm. The Examiner has cited Sandstrom for disclosing a “disk having a diameter greater than about 120 mm and less than 135 mm ...” (Office Action of 5/18/07, p. 7-8.) Sandstrom “is directed to a rewritable optical data storage disk having a substrate with an increased thickness that is in a range of approximately 2.3 to 2.6 mm. The increased thickness of the substrate enhances the flatness of the recording disk relative to a recording plane.” (Sandstrom, column 2, lines 26-31.) Thus, Sandstrom provides a reason for modifying the *thickness* of a standard optical disk. Sandstrom provides no reason for modifying the diameter. Sandstrom provides no reason for modifying the teachings of Lowthert and Picco to increase the *diameter* of an optical disk.

The Examiner has not identified the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed. As stated in the recent Supreme Court Decision in *KSR Int’l. Co., v. Teleflex, Inc.*, “this analysis should be made explicit.” (*KSR*, slip op. at 14, quoted in USPTO Memorandum to Technology Center Directors, May 3, 2007, p.2.) In fact, there is a good reason why a person of ordinary skill *would not combine* the range of diameters disclosed in Sandstrom with the teachings of Lowthert: if the diameter of a DVD disk is increased sufficiently, it will not fit in standard players and would render such a disk inoperable in the Lowthert invention. Accordingly, Applicants respectfully contend that it is improper to combine the disclosure of Sandstrom reference with the teachings of Lowthert and Picco. Applicants submit that for at least the reasons explained above, claim 12 is patentably defined over the cited art and accordingly, respectfully request that the rejection of claim 12 be withdrawn.

**Claim 13** recites in part:

a disc having data recorded on a reflective layer and an optically transmissive coating having a total transmissivity at 635nm of less than the minimum transmissivity set forth as the standard DVD specification.

The present Application provides a reason for the claimed transmissivity:

The DVDO may contain a thin coating of material having a high transmissivity at 400-410 nm and low transmissivity at 635-650 nm allowing the proprietary player to drive a 635 lasers at a higher power to penetrate, but preventing commercially available DVD players from reading the disc.

(Specification, paragraph [0063].)

The cited references are silent on the issue of transmissivity and fail to disclose or suggest the quoted claim recitation. Accordingly, Applicants respectfully request that the rejection of claim 13 be withdrawn.

**Claims 2-4, 14, 36 and 37**

Claims 2-4, 14, 36 and 37 currently stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Lowthert in view of Picco and further in view of Publication No. 2001/0042043 (“Shear”).

**Claims 2-4 and 14** each depend, directly or indirectly, from claim 1. **Claims 36 and 37** each depend, directly or indirectly, from claim 22. Applicants respectfully submit that for at least the reasons explained above with respect to independent claims 1 and 22, the dependent claims are patentably defined over the cited art and, accordingly, respectfully request that the rejection of these claims be withdrawn.

**Claims 28-29**

Claims 28-29 currently stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Lowthert in view of Picco and further in view of Publication No. 2004/0054630 (“Ginter”).

**Claim 28** recites in part: “shipping entertainment content on first media to customers on a periodic basis.” **Claim 29** recites in part: “wherein the periodic shipments are targeted to customer preferences.” The Examiner stated that “Ginter disclose periodic shipping entertainment content on a periodic basis and where the periodic shipments are target to customer preferences ([0201-0203], [1049] and [1178-1182].” (Office Action of 5/18/07, p. 10.) Applicants respectfully disagree with this characterization of the reference. Paragraphs [0201-0203] discuss aspects of electronic delivery of content and do not discuss shipping at all or

periodic shipping in particular. Paragraph [1049] refers to a “load module” that can be “loaded and executed, or it can be acquired from, shipped to, updated, or deleted by, other systems.” A load module in Ginter “contains code and static data (that is functionally the equivalent of code), and is used to perform the basic operations of VDE 100.” (Ginter, paragraph [1045].) Applicant is unable to discern a relationship between the “load modules” of Ginter and the “entertainment content” of claims 28 and 29. Applicants respectfully contend that “shipping entertainment content on a first media to customers on a periodic basis” is patentably distinct from a “load module” that is electronically “shipped to ... other systems.” Paragraphs [1178-1182] refer to electronic delivery of VDE objects. For example, Ginter states “shipping table 444, and receiving table 446 provide information about receipts and delivers of VDE objects 300. These data structures keep track of administrative objects sent or received by electronic appliance 600 ....” (Ginter, paragraph [1178].) The VDE objects that are being “shipped” are “virtual distribution environments,” for handling and control of “electronically stored or disseminated information.” (Ginter, Abstract.) No “entertainment content on first media” are being shipped in Ginter.

For at least the reasons explained above, Applicants respectfully submit that the cited references, either alone or in combination, do not teach the recitations of claims 28 and 29 and, therefore, claims 28 and 29 are patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claims 28 and 29 be withdrawn.

### **Claims 32-33**

Claims 32-33 stand rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Lowthert and in view Picco and further in view of U.S. Pat. No. 6,732,366 (“Russo”).

**Claims 32-33** each depend from claim 22. Applicants respectfully submit that for at least the reasons explained above with respect to independent claim 22, claim 32-33 are patentably defined over the cited art and, accordingly, respectfully request that the rejection of these claims be withdrawn.



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37 CFR § 1.114**

***Conclusion***

As explained above, Applicants submit that claims 1-9 and 11-38, which currently stand rejected in the Application, are patentably defined over the cited art. The Examiner is respectfully urged to reconsider the Application. Favorable consideration and passage to issue of the application is earnestly solicited. If the Examiner should, however, find the claims as presented herein are not allowable for any reason or if the Examiner has any questions, comments, or suggestions that would expedite the prosecution of the present case, the Applicants undersigned representative would sincerely welcome a telephone conference at (206) 903-2475.

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